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APR 27 2006

OFFICE OF PETITIONS

ROBERT D. PORTER
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ELLISVILLE, MO 63011

In re Application of :
Porter : DECISION ON PETITION
Application No. 10/759,822 :
Filed: January 20, 2004 :
For: THREAD SETTING PLUG GAGE :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed March 27, 2006.

The petition is hereby **DISMISSED**.

This application was became abandoned October 26, 2005 for failure to timely submit a proper reply to the non-final Office action mailed July 25, 2005. Notice of Abandonment was mailed February 10, 2006.

Petitioner alleges non-receipt of the non-final Office action, but has failed to provide sufficient documentary evidence of non-receipt.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing of the non-final Office action¹. This presumption may be overcome by a showing that the non-final Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the

¹ The revocation of power of attorney and change of correspondence address submitted March 27, 2006 have been entered into the record.

Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Office records indicate the Office communication was properly mailed to the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office.

The instant petition lacks the requisite statements referenced above and is not supported by the required copy of prior practitioner's docketing records.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the delay in timely submitting a properly reply to the Notice was unintentional or unavoidable pursuant to 37 CFR 1.137(b) and (a) respectively. See enclosed for additional guidance.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By hand delivery:

U.S. Patent and Trademark Office
Customer Window, **Mail Stop Petition**
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



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Enclosures: Form/PTO Privacy Statement